



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



CONFLICT OF INTEREST OPINION EC-COI-01-02

FACTS:

You are a member of the General Court. In addition to your legislative duties, you have two different part-time contractual arrangements with an educational institution of the Commonwealth ("College"). Under one agreement, you teach a course each semester to College students. Under a second agreement, you serve as the Coordinator of Evening Services (Coordinator) at the College. You have indicated that these positions do not overlap. That is, you do not teach your course at the same time as you are acting as Coordinator.

Traditionally, the College has had a difficult time filling the Coordinator's position. In the past, the College has assigned College administrators and faculty to rotate and cover one day per week. The College posted the position of Coordinator, you applied, and were hired for the position. When classes are in session you work three days a week in the early evening and Saturday mornings.

You describe your actual duties as follows. You make sure there is appropriate staff on duty. You check to make sure that all the equipment that the faculty may need that evening is in good working order. You verify that classrooms are available, and, if there is a problem, such as two professors assigned to the same room, you find other teaching space. You are a resource to the faculty and coordinate any problems or needs that the faculty may request. For example, if audio-visual equipment is needed, you will arrange to get it. On occasion you have also served as a teaching assistant. Because you have extensive knowledge of the College computer system, you fill in to register students at the beginning of the semester. You also register students for the numerous community service educational programs that the College offers throughout the year. Finally, you provide assistance to students by directing them to their classes, offering guidance regarding available College services, and counseling students about courses.

QUESTION:

Does paragraph 5 of G.L. c. 268A, §7, that allows state employees to receive compensation for "teaching and other related duties" in the state college system, permit you to receive compensation from an educational institution of the Commonwealth for employment as an adjunct faculty member and as the coordinator of evening services?

ANSWER:

Yes. Paragraph 5 of G.L. c. 268A, §7 will permit you to receive compensation from an educational institution of the Commonwealth for employment as an adjunct faculty member and will also permit you to be compensated as the coordinator of evening services because your coordinator duties are predominantly associated with the instructional function of the College, and therefore, "related" to teaching.

DISCUSSION:

G.L. c. 268A, §7 prohibits a state employee, including a state legislator, from having a financial interest, directly or indirectly, in a contract made by a state agency, unless an exemption applies. Paragraph 5 of §7 states:

This section [§7] shall not prohibit a state employee from teaching or performing other related duties in an educational institution of the commonwealth; provided, that such employee does not participate in, or have official responsibility for, the financial management of such educational institution; and provided, further, that such employee is so employed on a part-time basis. Such employee may be compensated for such services, notwithstanding the provisions of section twenty-one of chapter thirty. (emphasis added) (“teaching exemption”).

Clearly, the plain meaning of the statutory language will permit you to receive compensation for teaching your government course. However, an issue is raised of whether your Coordinator duties are “other related duties” as contemplated by the statutory exemption so that you may receive compensation for these duties.

When analyzing statutory language, the “language itself is the principal source of insight into the legislative purpose.”^{1/} The common dictionary meaning of the term “related” is “having relationship: connected by reason of an established or discoverable relation (such as painting and the arts)”^{2/} In using the term “related,” the Legislature employed language that evidences an intent to include activities in addition to and related to teaching, but the Legislature did not further define the parameters of the exemption. Thus, the Commission has the power to give the phrase a workable meaning.^{3/} In interpreting the parameters of a general classification created by the Legislature, it is helpful for us to review prior legislative history and Commission rulings to consider “conditions existing at the time of enactment” and the “objectives the law seeks to fulfil.”^{4/}

The “teaching exemption” was enacted in 1980 in response to Attorney General and Ethics Commission rulings. Prior to 1980, both the Attorney General and the Ethics Commission interpreted §7 to prohibit a state employee from entering a part-time teaching contract with a state educational institution.^{5/} In reaction to these opinions, legislation was proposed to add an exemption concerning teaching to G.L. c. 268A, §7. This legislation was strongly supported by the Commonwealth’s higher educational institutions and the Department of Education. According to the educational institutions, §7, as written and interpreted, unduly restrained the institutions from obtaining quality faculty for evening continuing education courses and from permitting day faculty to also teach in the evening division.^{6/}

St. 1980 c. 303 amended G.L. c. 268A, §7, stating:

this section [§7] shall not prohibit a state employee from teaching in an educational institution of the commonwealth; provided, that such employee does not participate in, or have official responsibility for, the financial management of such educational institution; and provided, further, that such employee is so employed on a part-time basis. Such employee may be compensated for such services, notwithstanding the provisions of section twenty-one of chapter thirty.

Following enactment of this amendment, the Ethics Commission advised state employees that they were permitted to have part-time teaching arrangements with state colleges. But, in one opinion, *EC-COI-82-158*, the Commission declined to interpret the word

“teaching” to include activities other than actual instruction. In *EC-COI-82-158*, a state college faculty member was interested in teaching part-time in the graduate and continuing education division of the college, as well as working on the division catalog issued each semester. The Commission advised the state employee that he could accept the teaching assignment but could not be paid to work on the catalog.^{7/}

In 1990, a bill was submitted to the Legislature seeking to amend the teaching exemption, by adding the phrase “or performing other related duties.” This amendment was passed, becoming St. 1990 c. 487. Governor Dukakis, in a letter to the Secretary of the Commonwealth, declared the act to be an emergency act and indicated in his letter that the act was to “enable teachers to perform related duties (such as part-time coaching and teaching) . . .”

In the only formal opinion issued by the Commission following enactment of this amendment, the Ethics Commission was asked whether a state college professor could be compensated in a separate college position as track coach.^{8/} The Commission, relying on the Governor’s letter discussed above, concluded that the teaching exemption would permit the professor’s second contractual arrangement with the college as a coach. Additionally, while noting that the Commission expressed no opinion on the merits of St. 1990, c. 487, the Commission provided the following guidance concerning how it would interpret the parameters of the exemption.

With respect to the type of services implicated by the amended exemption, we conclude that, while the General Court intended more flexibility than under the original 1980 amendment, the permissible services are not unlimited and must be directly related to the content of instruction and how that content is taught. Thus, services related to the development of curriculum, the selection and evaluation of teachers, course scheduling, and the advising of students in connection with courses would fall within the statutory exemption. On the other hand, purely administrative or custodial functions such as record-keeping, facility management, financial and budgetary services and personnel administration, while indirectly supporting the ultimate educational objectives of the institution, do not have a sufficiently direct relationship to instruction and therefore do not qualify under the amended exemption. In construing this exemption, we note our customary reluctance to expand unduly language contained in statutory exemptions to G.L. c. 268A.^{9/}

Thus, the 1990 legislative amendment evidences an intent to permit state employees, including elected state officials, to be compensated for providing some services to state educational institutions, other than classroom teaching. Further, the Legislature limited the expansive language, by keeping two limiting requirements: (1) only part-time work is permitted and; (2) those individuals, who, in their primary employment, are involved in the financial management of the educational institution are not eligible to use the exemption. Presumably, the latter requirement reflects a legislative concern that the top administrative and managerial employees at the educational institution can not use their positions to obtain an “inside track” on additional positions.

The Commission has not, since 1991, taken a formal opportunity to review the teaching exemption. In *EC-COI-91-7*, issued shortly after the enactment of the amendment, the Commission alerted state employees that it would require the proposed activity to be closely connected to actual teaching and/or curriculum activities in order to be covered by the exemption. In that case, based on a reading of the legislative history, the Commission

permitted an extracurricular activity, namely coaching a sport, to be covered by the exemption. We continue to believe that, to benefit from the “teaching exemption,” the proposed compensated activities should be associated with the teaching component of the state college. If the proposed duties include both administrative and instructional responsibilities, we conclude that the “teaching exemption” will be applicable if the duties predominantly support the instructional function of the college.

Turning to a review of your coordinator responsibilities, your contractual duties include both teaching and administrative obligations. For the following reasons we conclude that your coordinator arrangement is permissible under the teaching exemption. First, your duties do not implicate the two limiting requirements in the exemption. Your coordinator duties are part-time and, as a legislator, you do not participate in the financial management of the institution. The majority of your coordinator duties are directly supportive of the classroom teaching and are necessary faculty support. Additionally, at the College, the coordinator duties have, in the past, been a shared faculty/administration responsibility. Some of your duties are tasks in which faculty would traditionally be involved. For example, teachers generally advise students about course offerings, provide guidance about College services, and monitor students as they go to classes. These obligations are supportive of the instructional function at the College. Given the legislative intent to include activities, other than direct teaching, and the expansive language used by the Legislature, your coordinator duties at the College are predominantly associated with teaching and, therefore, are “other related duties” for the purpose of the law.

DATE AUTHORIZED: April 10, 2001

^{1/}*Leary v. Contributory Retirement Appeal Board*, 421 Mass. 344, 345 (1995).

^{2/}Webster’s Third International Dictionary; see also American Heritage Dictionary (“connected; associated”).

^{3/}See e.g., *Life Insurance Assoc. of Massachusetts v. State Ethics Commission*, 431 Mass. 1002, 1003 (2000).

^{4/}*Int’l Org. of Masters, etc. v. Woods Hole, Martha’s Vineyard & Nantucket Steamship Authority*, 392 Mass. 811, 813 (1984).

^{5/} *EC-COI-79-9*; Attorney General Conflict Opinion No. 844.

^{6/} See Memorandum of Corinne Martin, dated June 13, 1980 (*Executive Office of Educational Affairs*) to the Governor’s Office.

^{7/}*Id.*

^{8/}*EC-COI-91-7*.

^{9/}*Id.*